

PRACTICE AND PROCEDURE MANUAL

JUDGE WILLIAM J. HAYNES, JR.

I. Name and Brief Biography

Judge William J. Haynes, Jr. was appointed to the position of United States District Judge for the Middle District of Tennessee by President Clinton on November 15, 1999. He graduated from the College of St. Thomas in St. Paul, Minnesota with a Bachelor of Arts degree in Political Science and History in 1970, and from Vanderbilt University Law School in 1973.

Before his appointment to the federal bench, Judge Haynes worked for the Office of the Attorney General and Reporter for the State of Tennessee. In 1978, Judge Haynes served the office as deputy attorney general for the Antitrust and Consumer Protection Division. Later, Judge Haynes became the special deputy attorney general for litigation. After a brief stint in private practice, he was appointed as a Magistrate Judge for the Middle District of Tennessee in December, 1984, where he served until his appointment to the United States District Court.

Judge Haynes is married to Carol Donaldson Haynes and has three children. Judge Haynes is a lecturer in law at the Vanderbilt University Law School. He has been a member of the National Bar Association, the American Bar Association, the Nashville Bar Association, the Napier-Lobby Bar Association, Harry Phillips Inn of Court, the Tennessee Bar Association Commission on Women and Minorities in the Profession, and is a member of the Board of Directors of the American Judicature Society. Judge Haynes is also a Fellow of the American, Tennessee, and Nashville Bar Foundations.

II. Preliminary General Matters

A. Case Management and Scheduling

In accordance with the Court's case management plan, an initial case management conference is held and Judge Haynes uses that as an orientation to a bifurcated discovery plan.

Scheduling by Judge Haynes will focus on substantive issues, not just on the timing or progression of discovery. For example, discovery will be structured to address as quickly as possible a dispositive motion, particularly jurisdictional issues which would eliminate the need for other discovery. Judge Haynes will also inquire as to what discovery is necessary for the parties to evaluate the case promptly for settlement purposes. If appropriate, discovery is so limited and at the end of such discovery a status conference is set to determine if a settlement conference is appropriate. If settlement is likely, a settlement conference is set before another judge or upon agreement of the parties, before him. If settlement is not likely, discovery will be set to get the case ready for trial. In any event, it must be remembered that the approach will be one of customized case management so that what is related to the Court by lawyers about the case will greatly affect the provisions of any scheduling or case management order.

In complicated cases, Judge Haynes may require the disclosures that are reflected in an order that he entered in *Gibson Guitar Corp. v. Pattishall, McAuliffe, Nubury, Hilliard & Geraldson* (Docket 3: 91-0872) ["Pattishall Order"]. A copy of the Pattishall Order is included in *Appendix 3*.

Scheduling Order - Discovery Deadlines. Judge Haynes looks for the parties to use their best efforts to comply with such deadlines, since they framed the order to begin with. He recognizes, however, that invariably something unexpected will happen, and he is not bothered by a mutual agreement to extend a discovery deadline as long as it does not bump the pretrial conference or trial date. Upon submission of an agreed order, he will routinely sign it.

If the case is under the new case management plan, before signing any orders granting continuances or additional time for discovery in cases where the "age" of the case is approaching one year, Judge Haynes will require a satisfactory explanation at justifying the request for additional time. If the case precedes the case management plan, particular scrutiny is given to cases approaching three years since filing.

B. Correspondence with Court

All correspondence should be directed to the Court. Further, correspondence should not address substantive matters. Any communication with the Court addressing a substantive matter should be by motion or memorandum. It is certainly permissible for scheduling issues to be addressed in correspondence.

C. Telephone Conference with Court

Judge Haynes favors telephone conferences to resolve discovery disputes which arise during depositions, except for disputes concerning privilege issues or complicated issues.

These are acceptable to him when out-of-town lawyers are involved, unless there are a number of complicated issues to be resolved that might need District Court review, and then he will require an in-court hearing so that a court reporter can be present.

D. Telephone Conference with Law Clerks

Scheduling matters should be handled by the courtroom deputies, not by the law clerks. Thus, telephone conferences with law clerks are rare.

E. Pro Hac Vice Admission

This matter is usually reserved for the District Judges but he will handle such requests to accommodate a proceeding before him.

F. Briefs

In briefs, it is helpful to have a good statement of the facts and/or allegations in the case. Exhibits should be differentiated by exhibit tabs or colored paper separating the individual exhibits. This makes it easier for Judge Haynes to cite exhibits in his report and recommendations.

Briefs that exceed 30 pages should include a table of contents to provide him a "road map" of the arguments. He prefers extensive briefing on esoteric areas such as RICO and ERISA.

Reply Briefs. His practice is to allow the party making a motion to file a response to his opponent's opposing brief. He does not favor further briefs after the reply. After the opposition to a motion has been filed, he traditionally waits 13 days for a reply from the movant.

III. Pretrial Matters - Civil Cases

A. Scheduling Orders

All scheduling orders will be governed by the new rules on case management.

B. Continuances and Extensions

Judge Haynes' primary pet peeve concerns eleventh hour requests to reschedule motion hearings or pretrial conferences. Such requests present problems of giving timely notice to the opposing side, canceling the court reporter and security personnel, and wasting preparation time by the Magistrate Judge. He has no problem with requests made three days prior to the scheduled time. Even if less than three days' notice is given, however, he will grant a postponement, if the other side agrees to the postponement.

C. Pretrial Motions

1. Form of Motions

Grounds for motions should be stated succinctly in the motion itself. For example, on a motion to dismiss, rather than merely stating that the motion should be granted because the complaint fails to state a claim, more specific reasons should be set forth.

2. Referral to Magistrate Judge

Because of the new rules on case management, dispositive motions are rarely referred to the magistrate judge. The exception to this is Judge Higgins who does continue to refer some dispositive motions.

3. Oral Argument

He never denies a request for argument. He does not set a hearing *sua sponte* unless he does not have a clear understanding of the issues. He has also invited counsel to a hearing to respond to specific questions from him after he has reached a preliminary ruling on the motion.

4. Chamber Copies of Filings

Chamber copies of filings should be used only if time is of the essence.

5. Proposed Orders

Judge Haynes does utilize proposed orders which are submitted by the parties, particularly if simple and straightforward.

6. Resolution of Motions Before Trial

His goal is to get a report and recommendation filed in time for the parties to serve objections before the pretrial conference. In cases where this deadline cannot be met, he calls the courtroom deputy and asks for the pretrial conference and trial dates to be moved. He has also seen the judges grant joint motions to continue a trial pending the receipt of a report and recommendation.

D. Discovery

1. General

His rulings on discovery disputes do not depend upon the attitudes of the referring judges, but instead reflect his own opinions. He believes the District Judges are uniform in allowing "liberal discovery," which is his own policy. Exceptional cases involve questions of privilege, and he decides them on a case-by-case basis.

2. Discovery Period and Extensions

Judge Haynes does work with the lawyers on determining the discovery period and extensions thereof, unless requests of the lawyers unduly delay the case.

Judge Haynes looks for the parties to use their best efforts to comply with such deadlines, since they framed the scheduling order. He recognizes, however, that invariably something unexpected will occur, and he is not bothered by a mutual agreement to extend a discovery deadline as long as it does not affect the pretrial conference or trial date. Upon submission of an agreed order, he will routinely sign it.

3. Interrogatory/Responses

(a) Number Limit

He is more likely to allow interrogatories in excess of the local rules limit in cases involving multiple parties, claims, cross-claims, etc. Even so, he prefers for the interrogatories to be limited to the identification of witnesses and statistical information; if more detail is sought, he may require the parties to pursue the information through depositions. Although he has not denied such a motion, he has only granted it in one case, and there he got the requesting parties to consolidate their individual requests.

(b) Instructions and Definitions

He is not bothered by the inclusion of instructions and definitions in interrogatories as long as they are not oppressive and are designed to make answering easier or to help explain the questions. He has seen

some that were so tedious as to amount to additional sets of interrogatories, and these he does not favor.

(c) Objections

When a party objects to discovery requests as over broad or unduly burdensome, he looks for specifics. When the objection is over breadth, a party should be prepared to describe the volume of material that would have to be reviewed in order to respond (e.g., eight file cabinets). A claim of burdensomeness should include an identification of how long it would take to find, select, assemble, etc., the materials necessary to respond. Generic statements will not suffice.

The preferred method for lodging objections on burdensome discovery is by filing a motion for protective order. See, *Tarlton v. Meharry Medical College*.

(d) In the case of multiple claims and parties, counsel should coordinate interrogatories, document requests, etc. in order to avoid duplication.

4. Resolution of Discovery Disputes

Judge Haynes believes the district judges are uniform in allowing wide-open liberal discovery. Exceptional cases involve questions of privilege, and he decides them on a case-by-case basis.

Judge Haynes encourages discovery conference that can be conducted by a telephone conference with the Court on any discovery disputes except on privilege issues or complicated matters.

5. Rule 37 Sanctions

His rulings on motions to compel not arising out of violations of Court orders will depend upon how close the question is. If the opposing party has taken an unreasonable position, he will likely grant sanctions. If the motion arises out of a violation of a pre-existing order, he will be inclined to award sanctions unless there is some valid reason not to. In determining the amount of attorneys' fees to award, he considers what he knows from other cases, the papers filed in the pending case, etc., to determine if the request is within the range of reason. If so, and there is no opposition, he probably will not cut the request much.

6. Motions to Compel Requests for Expedited Determination

Upon receiving such a request, he will call for a status conference to determine the necessity for an expedited ruling. If the problem can be solved by postponing the discovery deadline without interfering with pretrial conferences and trial date, he will use that approach. Otherwise, he will hold the hearing, and make the decision of that motion his top priority.

7. Telephone Depositions

He has no problem as long as the parties agree.

8. Instructing Witnesses Not to Answer

An instruction not to answer is permissible only on privileged matters. The proper course is for interrogating counsel to ask the specific questions on the issues sought to be discovered and thereafter to adjourn the deposition or to adjourn the deposition and seek a protective order or to request a telephone conference with the Magistrate Judge. A preferable practice may be for the party asserting privilege to file a motion for protective order because that party is in the best position to state why the matter at issue is privileged.

9. Confidentiality Agreements

Judge Haynes will enter protective orders on confidential matters, unless the public interest is involved. He finds that the use of protective orders expedites cases.

E. Settlement

1. Who Presides

He leaves this to the election of the parties, subject to anything to the contrary which is contained in the order of reference from the district judge. Settlement conferences will not be performed by the case manager or by the judge who assigned the case unless (1) there is a compelling reason to the contrary, (2) the parties consent, and (3) the district judge to whom the case is assigned agrees.

Either Judge Haynes or the other Magistrate Judge will conduct the conference. If Judge Haynes conducts it, and a party has a problem with his presiding further in the case because of something he has heard, he has no reservation about reassigning the case.

2. Procedure

Counsel submit letters under seal (that do not become part of the record) including a description of the case, the amount of the offer, the party's evaluation of the case, the cost of litigation, and representation that these matters have been discussed with the client.

He reviews these with each side separately, and if there is anything that a party does not want disclosed to the other side, he wants to be told. The client, or someone with settlement authority, must be present. He then conducts shuttle diplomacy, and gives each side his evaluation of the strengths and weaknesses of the case and a rationale for the settlement amount he recommends. He has conducted several successful settlement conferences.

F. Pretrial Briefs

1. Form

The statement of facts in the pretrial brief is very important.

2. Scope in Non-Jury Cases

In non-jury cases, trial briefs may be submitted before or after trial as the parties may elect.

3. Scope in Jury Cases

It is helpful to have a pretrial brief in jury cases, unless counsel has submitted proposed jury instructions.

G. Injunctions

1. Scheduling

2. Expedited Discovery

Expedited discovery is certainly appropriate in cases involving injunctions.

H. Other Preliminary Matters

He prefers to deal with as many other preliminary matters as possible at the pretrial conference.

IV. Pretrial Matters - Criminal Cases

A. Suppression Hearings

There will not often be suppression hearings before Judge Haynes in criminal cases.

B. Motions

There will not often be motions before Judge Haynes in criminal cases.

C. Pretrial Conferences

In some complex criminal cases, there will be pretrial conferences conducted before Judge Haynes.

V. Trial Procedure

A. Scheduling and Location

Scheduling of trials will be subject to the new rules on case management. Bench and jury trials are held in Judge Haynes' courtroom.

B. Out-of-Town Parties, Witnesses, or Attorneys

Judge Haynes will attempt to fashion orders on trial procedure to accommodate out-of-town parties, witness and attorneys.

C. Motions *In Limine*

Judge Haynes prefers the use of these motions rather than having to face an issue for the first time during trial.

D. Courtroom Decorum

Counsel should remain behind the podium, and ask permission to approach the witness. Since he does not always have a court officer present, either his law clerk or the lawyer will have to pass exhibits to witnesses.

E. *Voir Dire*

1. In criminal cases, Judge Hayes uses Judge Wiseman's method of jury selection.

In civil cases, if the parties agree, he uses Judge Nixon's method (alternative strikes); if there is no agreement, he uses Judge Wiseman's (all prospective jurors are "placed in the box" and examined for *voir dire* at the same time).

2. Counsel should be cautious not to use too much personal solicitation of the jury. He covers this at the pretrial conference. If during *voir dire* a lawyer goes too far, he will admonish counsel to recall the local rule, which is his hint that this rule is being violated.

3. In this district, magistrate judges are authorized to conduct *voir dire* in felony cases as long as there is no objection. This is consistent with a prior ruling of the United State Supreme Court that magistrate judges have authority to conduct *voir dire* in felony cases as long as there is no objection from the defendant. However, there is a case before the United States Supreme Court from another district contesting such authority.

4. Use of Exhibits in *Voir Dire*. Judge Haynes has not had to rule on whether exhibits may be used during *voir dire*. Judge Haynes does permit use of exhibits during *voir dire* if no valid objection is made to the exhibit.

F. Note Taking by Jurors

Taking of notes by jurors is permitted; however, jurors will receive the usual cautions and admonitions concerning the use of notes.

G. Opening Statements

1. Length

He has no time limit on opening statement.

2. Use of Exhibits

As long as permission has been obtained as a preliminary matter or at the pretrial conference, it is permissible to use exhibits in opening statements that are not subject to objection.

H. Side Bar Conferences

Side Bar Conferences are permitted and utilized where appropriate.

I. Videotaped Testimony

Judge Haynes has no problems or reservations regarding the use of videotaped testimony.

J. Deposition Reading

It is permissible to utilize the "two-person" method of reading depositions.

K. Exhibits

All exhibits should be "pre-marked."

L. Expert Witnesses

Judge Haynes prefers the procedure of introducing the direct testimony of expert witnesses in narrative form. This is the procedure which was required by the prior Local Rules and which will still be followed when the Court so directs.

M. Motions for Directed Verdict (Now Called "Motion for Judgment as a Matter of Law")

N. Proposed Jury Instructions and Verdict Forms

Judge Haynes does utilize verdict forms. A draft of proposed jury instructions should be submitted before the first day of trial. However, supplemental filings of proposed jury instructions will be permitted throughout the trial.

O. Proposed Findings of Fact and Conclusions of Law

The parties may submit proposed findings of fact and conclusions of law either before or after trial, as the lawyers prefer.

P. Offers of Proof

Lawyers are encouraged to utilize offers of proof, particularly in cases where injunctive relief is requested.

Q. Closing Argument

There is no time limit on closing argument. Pursuant to the local rules and the Code of Professional Responsibility, Judge Haynes does not allow counsel to express personal opinions in argument. Counsel may argue any inferences from the proof that are logical and supported by the evidence.

R. Jury Deliberation

1. Copy of Instructions

Jurors will be given copies of the jury instructions which are read to them.

2. Access to Exhibits

Jurors will have access to exhibits during their deliberations.

3. Access to Transcript of Testimony or Videotaped Testimony

Judge Haynes has reservations with regard to allowing jurors access to a transcript of testimony or videotaped testimony. This is because such access tends to give undue emphasis to testimony which is transcribed or videotaped.

4. Availability of Counsel

During jury deliberations, counsel need not remain in the Courtroom. However, they should be available on short notice and the Court should be kept advised as to where counsel can be contacted.

5. Taking the Verdict and Special Interrogatories

Special interrogatories are utilized when requested.

6. Polling the Jury

The jurors will be polled when requested by the lawyers.

7. Interviewing the Jury

Interviewing of jurors is permitted only with leave of Court. Whether leave of Court will be granted is determined on a case-by-case basis.

VI. Sentencing in Criminal Cases

Judge Haynes follows the sentencing guidelines.

VII. Other Comments

A. Responsibility of Local Counsel

1. Purpose

Local counsel is required to assure that outside counsel will know of local practice and procedure. The local rules impose greater obligations than this on local counsel, but he enforces that rule only after notice to local counsel at a conference. He noted that the Local Rules Revision Committee is particularly looking at this rule.

2. Limited Responsibility and Authority

He has no problem with local counsel being a "briefcase toter" as long as that has been disclosed to outside counsel.

3. Rule 11 Sanctions

There has been a case where sanctions have been imposed only on out-of-state counsel and not local counsel.

B. Rule 11 Sanctions

He has handled several of these. Technically, such motions are non-dispositive, but some are so critical to the outcome of the case (because of the nature or amount of the sanctions) that he prepares a report and recommendation rather than an order so that a party can obtain *de novo* review from the district judge rather than review based on the clearly erroneous standard.

C. Submissions Under Seal

Matters to be submitted under seal should be placed in an envelope with the case name and docket number on it. The envelope should be actually sealed. The matter should be accompanied by a motion to seal and the matter will remain sealed until he has ruled on the motion to seal.

D. Agreed Orders

He has no problem with these when they concern routine matters such as extending discovery or other rescheduling deadlines.